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EXAMINER

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GROUP 3600

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/466,271
Filing Date: December 17, 1999
Appellant(s): DRYSDALE, IAN M.

James N. Kallis
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/08/02 appealing from the Office action
mailed 8/02/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Appeal No. 2004-1809.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

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5850442

Muftic

12-15-1998

PR Newswire. General Instrument's Digital Cable TV Set-Top Terminals To Become Latest New Acceptance Device For Smart Cards. December 10, 1998. p. 1.

Booker, Ellis. New System A Welcome Guest At Hyatt. Computerworld. vol. 25, iss. 28, July 15, 1991. pp. 51 - 53.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

To ensure clarity and clear understanding of examiner's rationale for application of cited prior art, terminology contained within parentheses indicates quoted language contained within said cited prior art reference while unquoted language contained within

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parentheses indicates the general concept as conveyed by said cited prior art reference. Such parenthetical terminology is to be interpreted as “reading on” or being “mapped to” the claim language prior to such parenthetical inclusions.

Claims 1 – 3, 5 – 8, 10 - 15, 17 - 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muftic (US Patent 5,850,442) in view of PR Newswire (*General Instrument's Digital Interactive Cable TV Set-Top Terminals To Become The Latest New Acceptance Device For Smart Cards*. PR Newswire. New York. December 10, 1998. p.1) and Booker (Booker, Ellis. *New System A Welcome Guest at Hyatt*. *Computerworld*. vol. 25, iss. 28. July 15, 1991. pp. 51 – 53).

Regarding Claims 1 – 3, 5- 8 and 10, Muftic discloses a method of performing a card transaction using a transaction card, the method comprising:

- accessing a web server of a merchant service provider (“logged on to a server”) via an Internet service provider using a transaction device (“computer is equipped with a card reader”) during a transaction (“conducting electronic commerce”/“electronic payment”) involving a transaction card (“smartcard” containing “smart tokens”), wherein the web server (“server”) includes commands (programming logic) for processing transaction information (“business transactions”) associated with the transaction card to obtain authorization (“authentication”) from the merchant service provider (“server”) for the transaction; (see col. 7, lines 14 – 64; col. 10, lines 27 – 48; col. 12, lines 5 – col. 14, line 62);

- entering the transaction card into a card reader of the transaction device in order to enter transaction information (“read...smart tokens”) associated with the transaction card into the web server; (see col. 10, lines 27 – 48);
- wherein accessing a web server comprises accessing a web page (“home page”) of the web server, and wherein the web page includes commands for processing the transaction information (“order information”). (see col. 13, lines 28 – 39);
- further comprising entering (“fills in”) additional transaction information (“electronic ID of the seller and the amount”) into the web server via the transaction device (“computer”). (see col. 14, lines 37 – 58);
- using a keypad (“keyboard”) of the transaction device (“computer”). (see col. 10, lines 27 – 39);
- further comprising displaying information on a display device (“display”) of the transaction device (“computer”). (see col. 10, lines 27 – 39);
- wherein displaying information includes displaying an advertisement (“company’s home page”/ “yellow pages” listing) downloaded from the Internet (“web”). (see col. 20, lines 10 – 37);
- wherein displaying information includes displaying an electronic coupon (“certificates of insurance”) downloaded from the Internet (“network”). (see col. 20, line 68 – col. 21, line 17); and
- further comprising updating the commands of the web server (“loading authentic information into a server”). (see col. 12, lines 5 – 40).

Muftic does not teach underlined limitations – a method comprising:

- entering the transaction card into a card reader of the transaction device in order to enter transaction information associated with the transaction card into the web server during the transaction;
- wherein the transaction device does not utilize any merchant service provider proprietary software for the transaction information to be processed to obtain authorization from the merchant service provider for the transaction;
- wherein the transaction device accesses the web server without accessing any merchant service provider proprietary network.

Muftic does not explicitly teach that the entering of transaction information during the transaction. However, entrance of transaction information during the transaction, rather than before or after the transaction, is old and well known in the art of information technology and security, as separating the entrance of transaction information from the transaction, itself, presents the security risk of unauthorized and/or incomplete transactions due to the temporal separation of entering transaction information and performance of said transaction. Therefore, it would have been obvious to one of ordinary skill in the art to have modified Muftic by incorporating the entrance of transaction information during the transaction, rather than before or after, reducing security risks and possible errors due to separation of these two elements of the transaction.

Utilization and implementation of non-proprietary software to complete card-based transactions is old and well known in the art of computer programming and ecommerce, as evidenced by PR Newswire which discloses the development of the Visa Open Platform, "a flexible non-proprietary platform that enables that fast and easy development of globally interoperable multiple application smart card systems." (see p. 1). The Visa Open Platform has been accepted to allow transaction devices (GSM mobile phones) to complete transactions (load applications onto smart cards). (see p.1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Muftic by incorporating non-proprietary software onto the transaction device to complete the transaction, as disclosed by PR Newswire, allowing "fast and easy development" of said card-based system, furthering Muftic's stated motivation of developing a system for electronic transactions to occur over "an open network." (see col. 1, lines 19 – 22).

Utilization of a non-proprietary network and the benefits of non-proprietary technology and/or software, in general, is old and well known in the art of information technology as evidenced by Booker which discusses the switch from "a proprietary to a nonproprietary wide-area network" that resulted in financial savings "in leasing fees and maintenance" and allowed them "to respond [more] quickly to changes in the marketplace." It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Muftic and PR Newswire to incorporate a non-proprietary network and non-proprietary technology, in general, as disclosed by Booker, to allow the system to capture the benefits of non-proprietary technology.

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Furthermore, based upon the benefits of non-proprietary technology and/or software, as disclosed by Booker, one of ordinary skill in the art at the time the invention was made to have further modified Muftic, PR Newswire and Booker by eliminating as much propriety technology and/or software as possible, if not all proprietary technology and/or software, from the system to capture the benefits of non-proprietary software and/or technology.

Regarding Claim 11, Claim 11 recites similar limitations and/or would have been obvious based upon Claim 1 rejected above, and is therefore rejected using the same art and rationale as applied in the rejection of Claim 1. Differing claim limitations of Claim 11 are taught by Muftic such as a method wherein:

- the transaction information includes an account number associated with the transaction card ("Credit_Card domain of a smart token...contains identifying information about the credit card company, the account name and number"). (see col. 14, lines 20 – 33).

Regarding Claims 12 - 15, further system claims would have been obvious from method claims rejected above, Claims 1, 3 and 5 - 8, and are therefore rejected using the same art and rationale.

Regarding Claims 17 – 19, Muftic discloses a method:

- wherein the card transaction involves a smart card. (see col. 10, lines 26 - 48);

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- wherein the transaction device comprises a point of service terminal (“terminal”) at a merchant or retail location (“commercial establishments”). (see col. 4, line 60 – col. 5, line 5); and
- further comprising transmitting information (drawing on line of credit/obtaining cash value) to and from a merchant service provider via the transaction device (“terminal”) and the web server (“server”). (see col. 4, line 60 – col. 5, line 5).

Claims 4, 16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muftic, PR Newswire and Booker, as applied to Claims 1 and 15, and further in view of Athing (US Patent 5,987,498).

Regarding Claims 4, 16 and 20, Muftic discloses a method of performing a card transaction, the method comprising:

- further comprising entering (inputting) additional transaction information (seller ID and amount). (see col. 14, lines 37 – 58);
- further comprising displaying information on a display device (display) of the transaction device (computer). (see col. 10, lines 27 – 39);
- further comprising providing an electronic signature (digital signature). (see col. 13, lines 40 – 48).

Muftic does not teach underlined limitations - a method of performing a card transaction, the method comprising:

- wherein entering additional transaction information using a touch-sensitive screen of the device;
- wherein the display device comprises a touch-sensitive screen; and
- further comprising providing an electronic signature using a pen and the touch-sensitive screen.

Athing discloses a method of performing a card transaction, the method comprising:

- wherein entering additional information using a touch-sensitive screen of the device. (see col. 6, lines 36 – 46);
- wherein the display device comprises a touch-sensitive screen. (see col. 6, lines 36 – 46); and
- further comprising using a pen (touch-screen pointing device) and the touch sensitive screen. (see col. 6, lines 35 – 46).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Muftic and PR Newswire by incorporating conventional input and display devices such as a pen and touch sensitive screen, as disclosed by Athing, to further facilitate communication over the network.

(10) Response to Argument

Analogous Arts

As a preliminary matter, Examiner asserts that the prior art references (Muftic, PR Newswire, Athing and Booker) are valid under the analogous arts test. The Courts

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have stated that to be utilized "as a basis for rejection of the applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned."

In re Oetiker, 977 F.2d 1443, 1447 (Fed. Cir. 1992). As such "it is necessary to consider "the reality of the circumstances" -- in other words, common sense -- in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor." *In re Wood*, 599 F.2d 1032, 1036 (CCPA 1979). Examiner asserts that based upon common sense, the field of the references and/or the problem the inventor was concerned about, that the cited prior art references would have been utilized by a skilled artisan in the art, as Muftic, PR Newswire and Athing relate to card-based systems operating upon a network while Booker relates to network.

Piecemeal Examination

As a further preliminary matter, Examiner asserts that Appellant and Board should refrain from conducting piece-meal analysis of prior art references, as "one cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references." *In re Keller, Terry, and Davies*, 208 USPQ 871, 882 (CCPA 1981). In the instant case, Appellant refutes each prior art reference individually, rather than viewing them in combination, in light of the totality of their combined teachings.

Claim 1

For the ease of the Board, Examiner presents a mapping of the claim limitations of the Claim 1 to the applicable prior art references.

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Phrase #	<u>Claim 2</u>	<u>Muftic (US Patent 5,850,422)</u>	<u>PR Newswire (NPL)</u>	<u>Booker (NPL)</u>
1	a method of performing a transaction using a transaction card, the method comprising:	a method of performing a transaction using a transaction card, the method comprising:		
2	accessing a web server of a merchant service provider via an Internet service provider using a transaction device during a transaction involving a transaction card,	accessing a web server of a merchant service provider ("logged on to a server") via an Internet service provider using a transaction device ("computer is equipped with a card reader") during a transaction ("conducting electronic commerce"/"electronic payment") involving a transaction card ("smartcard" containing "smart tokens"), (see col. 7, lines 14 – 64; col. 10, lines 27 – 48; col. 12, lines 5 – col. 14, line 62);		
	wherein the web server includes commands for processing transaction information associated with the transaction card to obtain authorization from the merchant service provider for the transaction; and	wherein the web server ("server") includes commands (programming logic) for processing transaction information ("business transactions") associated with the transaction card to obtain authorization ("authentication") from the merchant service provider ("server") for the transaction; (see col. 7, lines 14 – 64; col. 10, lines 27 – 48; col. 12, lines 5 – col. 14, line 62);		

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3	entering the transaction card into a card reader of the transaction device in order to enter transaction information associated with the transaction card into the web server during the transaction;	entering the transaction card into a card reader of the transaction device in order to enter transaction information ("read...smart tokens") associated with the transaction card into the web server; (see col. 10, lines 27 – 48);		
4	wherein the transaction device does not utilize any merchant service provider proprietary software for the transaction information to be processed to obtain authorization from the merchant service provider for the transaction;	wherein accessing a web server comprises accessing a web page ("home page") of the web server, and wherein the web page includes commands for processing the transaction information ("order information"). (see col. 13, lines 28 – 39).	PR Newswire which discloses the development of the Visa Open Platform, "a flexible non-proprietary platform that enables that fast and easy development of globally interoperable multiple application smart card systems." (see p. 1).	
5	wherein the transaction device accesses the web server without accessing any merchant service provider propriety network.			Booker which discusses the switch from "a proprietary to a nonproprietary wide-area network" that resulted in financial savings "in leasing fees and maintenance" and allowed them "to respond

				[more] quickly to changes in the marketplace."
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Claim 1 - Muftic

Regarding whether the MSP web server has commands for processing transaction information associated with the transaction card to obtain authorization from the MSP for the transaction, Appellant asserts that Appeal Board previously indicated that Muftic does not disclose a web server including commands for processing a transaction. Examiner refutes such an assertion, as Appeal Board merely stated that "[t]he portion of Muftic relied upon in support of [previous Examiner's] argument does not disclose a web server including commands for processing a transaction," not that Muftic, in its entirety, failed to disclose such a claim limitation (see Appeal Board Decision, pp. 2 – 3).

Muftic proposes an improvement to a conventional and standard Internet environment.

Thus, **the augmentation of standard Internet environment** with security features, as illustrated in FIG. 1, is necessary and desirable in order to facilitate electronic commercial transactions which are free of the problems of the prior art. (emphasis added, col. 9, line 50 – 55)

Muftic discloses that in a conventional and standard Internet environment, that clients connect via the Internet to web servers that process transactions, such as transactions related to "electronic notary or escrow agent" functions.

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FIG. 1 is a representation of a network (100), such as the Internet, which is equipped for world wide electronic commerce. The network 100 selectively links a variety of users together. Several network users have special functions. **Network elements H_i 110 represent a variety of electronic commerce servers.** In accordance with the usual practice, a plurality of home pages may be resident on a single computer generally referred to as a web site. Each of the home pages operates as a server for receiving and responding to connections and/or messages from one or more clients C_i (120). Users participating in electronic commerce are logically related in a certification matrix using security servers 130 as set forth more in detail in the Infrastructure application referred to above. In addition, one or more indexing/addressing servers (140) may be found in the network. These servers may constitute white pages or yellow pages directories and generally comply with CCITT recommendation X.500. **One or more servers may constitute a trusted third party (TTP) 150 and perform functions such as electronic notary or escrow agent.** Archiving server(s) 160 may provide a repository for documenting legal and contractual transactions and/or for maintaining certificate revocation lists as set forth more particularly in the Infrastructure application, referred to above. (emphasis added, see col. 9, lines 15 – 36).

Muftic also discloses a web server, such as a retailer's computer, including commands for processing a purchase transaction, such as the receipt of a charge slip, storage of such a slip and return of a receipt to the purchaser.

The user fills in the electronic ID of the seller and the amount (1620) and applies a digital signature (1630). **The electronic charge slip is transferred to the seller's computer (1640) and a copy is stored in the purchase area (1650). An electronic receipt, electronically signed by the seller is returned, optionally, and is stored in the receipt area of the domain.** The account unpaid balance is then increased by the amount of the purchase (1670) and the process ends. (emphasis added, col. 14, lines 37 – 48).

Appellant even states that in Muftic "the servers receive and respond to connections and/or messages from the clients" (see Appeal Brief, p. 10). Examiner asserts that by the Appellant's own admission the servers in Muftic are performing transactions, transactions related to the receipt and issuance of messages.

Perhaps Appellant seeks to assert a particular interpretation concerning the phrase "processing a transaction." However, as no particular definition of claim terminology was articulated in the original specification nor utilized in the previously presented claim, the common and ordinary definition was applied as to provide the "broadest reasonable interpretation consistent with the specification during the examination of a patent application since the applicant may then amend his claims." See *In re Prater and Wei*, 162 USPQ 541, 550 (CCPA 1969). Examiner asserts that the processing of such information and performance of functions on a web-enabled server does constitute a web server processing a transaction.

Appellant argues that "authentication of parties as to their identity on a given web server is not the same as a web server processing transaction information associated with the transaction card to obtain authorization from a MSP for the transaction." (see Appeal Brief, pp. 10 – 11).

Muftic discloses transaction information associated with the transaction card, such as smart tokens on a smart card. Such smart tokens may be encoded with various types of transaction information such as account name and account number.

In addition, the computer is equipped with card reader 350 which will both read and write smart tokens such as smart cards or PCMCIA cards. Preferably, the cards are smart cards and card readers both read/write smart cards. (see col. 10, lines 28 – 32).

FIG. 14 is an exemplary layout of a Credit.sub.-- Card domain of a smart token.
(30) **Block 1400 contains identifying information about the credit card company, the account name and number, the credit limit and the account**

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balance. Area 1410 represents a list of purchases in corresponding amounts. Item 1420 contains a list of payments made to the credit card company on account. Item 1430 represents a list of returns or credits resulting from undoing all or part of a sale either by returning goods purchased or by rejecting services provided. Item 1440 is an area for storing receipts from the seller for later use. Item 1450 contains a list of the names of functions or processes utilized in conjunction with this domain. (see col. 14, lines 20 – 32).

Muftic discloses a web server processing transaction information

associated with the transaction card, such as smart tokens on a smart card, to obtain authorization from a server, such as being an authorized user allowed access to the system.

FIG. 7 is flow chart of a process for loading authentic information into a server. A user logs on (700) to a server. **The user logs on (710) to the edit subsystem using a strong authentication protocol (such as that set forth in the Smart Token application referred to above). The strong authentication protocol utilizes a public key certificate for validation of the identity of the station logging on and thus the attempt to logon to the edit subsystem results in a validation of the logon attempt against the stored public key of the authorized user for that application server (720).** If the public key test passes (720-P) the information contained in the home page may be edited by addition, deletion or change (730). If the logon attempt does not pass the public key check (720-F), logon to the edit subsystem is not permitted and no change may be made to the information. Typically, a user's public key would be stored in the server at the time the account was set up for the application server and would be accessible for checking by the system. Of course, a strong authentication protocol could be utilized for a server access as well as access to the edit subsystem. (emphasis added, see col. 12, lines 39 – 58).

Muftic discloses that once authorized by the web server, such as being logged in, processing the transaction information on the web server.

FIG. 10 is a flow chart of a process for placing an order. **The user logs on to a desired home page server identified in the manner described above (1000) and browses to the extent needed to select a product or service to order (1010).** The user obtains an order form by either downloading it or by activating an order indication on the home page (1020) and fills out the order form with the needed information (1040). Optionally, payment may be included using one of the methodologies discussed hereinafter (1050). The user digitally signs the order form and sends it to the server or directly to the vendor as specified in information contained on the server (1060). (emphasis added, col. 13, lines 28 – 34).

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The user fills in the electronic ID of the seller and the amount (1620) and applies a digital signature (1630). **The electronic charge slip is transferred to the seller's computer (1640) and a copy is stored in the purchase area (1650). An electronic receipt, electronically signed by the seller is returned, optionally, and is stored in the receipt area of the domain.** The account unpaid balance is then increased by the amount of the purchase (1670) and the process ends. (emphasis added, col. 14, lines 37 – 48).

Examiner asserts that Muftic does disclose a web server processing transaction information associated with the transaction card to obtain authorization from a MSP for the transaction.

Claim 1 – PR Newswire

Appellant argues that, although PR Newswire discloses non-proprietary software for a smart card system, that “PR Newswire does not teach nor suggest that a transaction device (terminal) does not use any MSP proprietary software for transaction information to be processed to obtain authorization from a MSP for a transaction.” Examiner refutes such an assertion.

Examiner asserts, as mentioned previously, prior art references must be examined in combination and not in piecemeal fashion. Therefore, Examiner asserts that when read in combination that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Muftic to not to use any proprietary software, as disclosed by PR Newswire, as an emphasis placed upon a non-proprietary software package would allow for the “fast and easy development” of such a card-based system. (see p. 1).

Furthermore, the Courts have stated that “[a] suggestion, teaching, or motivation to combine the relevant prior art teachings does not have to be found explicitly in the prior art, as the teaching, motivation, or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references...The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art... there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 78 USPQ2d 1329, 1336 (CA FC 2006). Examiner asserts that he has provided such “articulated reasoning” to support the legal conclusion of obviousness.

Claim 1 - Booker

Appellant argues that Booker, although explicitly stating that Hyatt moved their computer system from “a proprietary to nonproprietary wide-area network”, that Hyatt “appears to be proprietary” nonetheless (see Appeal Brief, p. 12). However, Examiner would rather the prior art reference speak for itself in that it explicitly states the usage of a “nonproprietary wide-area network.”

Furthermore, should the Board disagree with Examiner’s interpretation of Booker and its explicit disclosure of a “nonproprietary wide-area network,” Examiner asserts that Mufic discloses a card-based system operating over the Internet which is a non-proprietary network. (see abstract).

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Appellant further attempts to differentiate Booker by asserting that argued claim limitations of “wherein the transaction device accesses the web server without accessing any MSP provider proprietary network” differ from “a Hyatt telephone operator accessing a Hyatt computer over Hyatt’s non-proprietary network.” (see Appeal Brief, p. 12). However, Examiner is unsure how a Hyatt telephone operator utilizing a transaction device connected to a non-proprietary network is any different from any other system-user utilizing a transaction device connected to a non-proprietary network.

Examiner asserts that when prior art references are read in combination that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Muftic and PR Newswire by incorporating a non-proprietary network, as disclosed by Booker, allowing for the avoidance of the “leasing fees and maintenance” costs related to the use of proprietary networks.

Claims 2 – 8 and 11 - 20

All argument(s) and/or rationale(s) set forth above with respect to earlier addressed claim(s), Claim(s) 1, are hereby incorporated and/or reapplied so as to apply to Claim(s) 2 – 8 and 11 - 20 where applicable.

(11) Related Proceeding(s) Appendix

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Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided herein.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Jason Borlinghaus

March 22, 2007

Conferees:

James Kramer



Vincent Millin

